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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE PRESIDING
PATRICIA STEWART, D.O.,)
)
Plaintiff,)
) ED CV 13-1670-ODW(DTBx)
vs.)
)
AMERICAN ASSOCIATION OF PHYSICIAN) VOLUME 11
SPECIALISTS, INC., WILLIAM)
CARBONE; ROBERT CERRATO; SVETLANA) PAGES 1 - 36
RUBAKOVIC and DOES 1-100,)
)
Defendants.)
)
_____)

REPORTER'S TRANSCRIPT OF
TRIAL - DAY 11
THURSDAY, FEBRUARY 11, 2016
3:37 P.M.
LOS ANGELES, CALIFORNIA

DEBI READ, CSR 3949 CRR RMR RDR
FEDERAL OFFICIAL COURT REPORTER
312 NORTH SPRING STREET 432A
LOS ANGELES, CALIFORNIA 90012
READIT3949@GMAIL.COM

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

CONWELL BUSINESS LAW, P.A.
BY: GEORGE DONOVAN CONWELL, JR.
Attorney at Law
12610 Race Track Road, Suite 200
Tampa, Florida 33626
813-282-8000
dconwell@conwellbusinesslaw.com

HILAIRE MCGRIFF, PC
BY: MIKA HILAIRE
Attorney at Law
601 S. Figueroa Street, Suite 4050
Los Angeles, California 90017
213-330-4260
mika@hmpclaw.com

WILLIAM A. OKERBLOM LAW OFFICES
BY: WILLIAM ALLEN OKERBLOM
Attorney at Law
1145 E. Clark Avenue, Suite H
Santa Maria, California 93454
805-478-6570
drlaw07@aol.com

ON BEHALF OF THE DEFENDANTS AMERICAN ASSOCIATION OF
PHYSICIAN SPECIALISTS, INC.; WILLIAM CARBONE; ROBERT CERRATO:

ANDERSON, MCPHARLIN & CONNERS LLP
BY: ERIC A. SCHNEIDER
BY: LEILA M. ROSSETTI
Attorney at Law
707 Wilshire Boulevard, Suite 4000
Los Angeles, California 90017-3623
213-688-0080
eas@amclaw.com
lmr@amclaw.com

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A P P E A R A N C E S (continued)

ON BEHALF OF DEFENDANT AMERICAN ASSOCIATION OF PHYSICIAN
SPECIALISTS, INC.:

GUSRAE KAPLAN NUSBAUM PLLC
BY: MARLEN KRUSHKOV
Attorney at Law
120 Wall Street
New York, New York 10005
212-269-1400
mkrushkov@gusraekaplan.com

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E X H I B I T S

NO.	DESCRIPTION	FOR	FOR	VOL.
		IDENTIFICATION	EVIDENCE	
		PG.	PG.	
1767	AAPS 2013 tax returns - unredacted	18	19	11

1 LOS ANGELES, CALIFORNIA; THURSDAY, FEBRUARY 11, 2016

2 3:37 p.m.

3 -oOo-

4 (Call to Order of the Court.)

5 (Open court out of the presence of the jury.)

6 THE COURTROOM DEPUTY: Calling Item 1, ED CV
7 13-1670, Patricia Stewart, D.O. versus American Association of
8 Physician Specialists, Inc., et al.

9 Counsel, may I have your appearances, please.

10 MS. HILAIRE: Mika Hilaire appearing on behalf of
11 the plaintiff Patricia Stewart.

12 MR. SCHNEIDER: Eric Schneider for the defendants.

13 THE COURT: All right. The jury is still outside
14 the courtroom deliberating, but the Court has been advised that
15 the parties have reached a resolution of this matter. And for
16 the benefit of some level of comfort to both sides, the terms
17 of the settlement are being placed on the record.

18 Where'd Mr. Schneider go?

19 MS. HILAIRE: He's right here.

20 MR. SCHNEIDER: He is finding the settlement.

21 MS. HILAIRE: Do you want me to say it? I know it
22 off the top of my head.

23 MR. SCHNEIDER: I'd like to read along when you do.

24 MS. HILAIRE: Okay. Go ahead.

25 (Mr. Conwell entered the courtroom.)

1 MR. CONWELL: Hey, what are we doing?

2 THE COURT: You're keeping your mouth shut.

3 MR. SCHNEIDER: Okay.

4 MS. HILAIRE: Okay. Go ahead.

5 MR. SCHNEIDER: Where's the judge?

6 THE COURTROOM DEPUTY: Right there.

7 MR. SCHNEIDER: Oh, okay.

8 THE COURT: I'm not taking it down. She is.

9 MR. SCHNEIDER: I understand, but I feel more
10 comfortable if you're in the room.

11 THE COURT: Okay.

12 MR. SCHNEIDER: Okay. The terms of the settlement
13 are as follows:

14 1. One lump sum payment of \$5,500,00 to be paid within
15 ten days of verdict;

16 2. All parties to bear their own costs and fees;

17 3. A letter of apology to be sent no later than ten days
18 after the verdict. Letter must apologize for wrongfully filing
19 a lawsuit against Dr. Stewart, bringing unfounded discipline
20 against her, expelling her, and defaming her name and
21 reputation;

22 Dismissal of Dr. Okerblom from Florida litigation with
23 prejudice, each party to bear their own attorneys' fees and
24 costs; and

25 5. The jury goes to verdict on all claims.

1 So I will represent that all three of my clients have
2 signed off. I have given the signed document to Ms. Hilaire.
3 The plaintiff also signed off on that document, which I do not
4 yet have, but I'm assured I will get soon.

5 MS. HILAIRE: Yes.

6 THE COURT: All right. So it's my understanding
7 that should the jury return as part of their verdict a finding
8 of malice, fraud, or oppression, then we will move into the
9 phase two part of the trial on punitive damages and that the
10 total judgment in this case will not be enforced; is that
11 correct?

12 MR. SCHNEIDER: I don't see any reason for it to be
13 entered.

14 MR. CONWELL: The only reason -- the only reason a
15 judgment would be entered is if they breach the agreement and
16 don't pay. They're obligated to pay within ten days, so we
17 want a jury verdict. In the event anything goes wrong, we can
18 move forward with the judgment.

19 THE COURT: Understood.

20 MS. HILAIRE: Yes.

21 THE COURT: That your understanding, Mr. Schneider?

22 MR. SCHNEIDER: Yes.

23 THE COURT: All right. Excellent. Thank you.

24 Okay. We're off.

25 (Brief pause in the proceedings.)

1 (Open court in the presence of the jury.)

2 THE COURT: All right. Ladies and gentlemen --
3 well, go ahead. Call the case.

4 THE COURTROOM DEPUTY: Calling Item 1, ED CV
5 13-1670, Patricia Stewart D.O. versus American Association of
6 Physician Specialists, Inc., et al.

7 Counsel, may I have your appearances, again.

8 MS. HILAIRE: Mika Hilaire on behalf of Patricia
9 Stewart.

10 MR. CONWELL: And Don Conwell on behalf of Patricia
11 Stewart.

12 THE COURT: Good afternoon.

13 MR. SCHNEIDER: Eric Schneider for the defendants.

14 THE COURT: Good afternoon.

15 Ladies and gentlemen, I understand that you have a
16 verdict; is that true?

17 THE FOREPERSON: That is true.

18 THE COURT: Who's the foreperson? Mr. Kotler?

19 THE FOREPERSON: Yes.

20 THE COURT: Listen. I apologize to you all for
21 keeping you waiting. I'm sorry.

22 Mr. Kotler, if you will hand the verdict folder to
23 Ms. English.

24 Thank you.

25 All right. Ms. English, would you publish the verdict,

1 please.

2 THE COURTROOM DEPUTY: (Reading:)

3 "United States District Court, Central District of
4 California, Patricia Stewart D.O. versus American Association
5 of Physician Specialists, Inc., et al., case No. ED CV
6 13-01670.

7 Jury Verdict:

8 Breach of Contract:

9 1. Did Stewart do all, or substantially all, of the
10 significant things that the contract required her to do or was
11 she excused from having to do so?

12 Yes.

13 2. Did AAPS fail to do something that the contract
14 required it to do?

15 Yes.

16 3. Was Stewart harmed by that failure?

17 Yes.

18 What are Stewart's damages?

19 Past economic loss: \$1,081,927.

20 Future economic loss: \$5,819,808.

21 TOTAL: 6,901,735.

22 Fraudulent Promise:

23 1. Did AAPS make a false promise to Stewart that AAPS
24 would provide her an appeal before a panel of past presidents?

25 Yes.

1 2. Did AAPS know that the promise was false at the time
2 that it was made or did it make the representation recklessly
3 and without regard for its truth at the time that it was made?

4 Yes.

5 3. Did AAPS intend that Stewart rely on the promise?

6 Yes.

7 4. Did Stewart reasonably rely on the promise?

8 Yes.

9 5. Was Stewart's reliance on AAPS's promise a substantial
10 factor in causing harm to Stewart?

11 Yes.

12 What are Stewart's damages?

13 Past economic loss, lost earnings: 191,791.

14 Other past economic loss: \$890,136.

15 Total Past Economic Damages: \$1,081,927.

16 Future economic loss, lost earnings: \$2,254,670.

17 Other future economic loss: \$3,565,138.

18 Total future economic damages: 5,819,808.

19 Past noneconomic loss, including mental suffering:

20 1,500,000.

21 Future noneconomic loss, including mental suffering:

22 1,000,000.

23 TOTAL: \$9,401,735.

24 Unruh Discrimination:

25 1. Did AAPS deny full and equal privileges to Patricia

1 Stewart?

2 Yes.

3 2. Was Patty Stewart's sex a substantial motivating
4 reason for AAPS's conduct?

5 No.

6 No. 3: Was AAPS's conduct a substantial factor in causing
7 harm to Patricia Stewart?

8 Yes.

9 What are Patty Stewart's damages?

10 Past economic loss, lost earnings/lost profits: \$191,791.

11 Other past economic loss: \$890,136.

12 Total Past Economic Damages: \$1,081,927.

13 Future economic loss, lost earnings/lost profits:
14 \$2,254,670.

15 Other future economic loss: 3,565,138.

16 Total Future Economic Damages: \$5,819,808.

17 Past noneconomic loss, including physical pain/mental
18 suffering: 1,000,000.

19 Future noneconomic loss, including physical pain/mental
20 suffering: 1,500,000.

21 TOTAL: 9,401,735.

22 Defamation AAPS:

23 1. Did AAPS make the statements set forth in the
24 March 28, 2012, e-mail to all members of AAPS and the
25 statements made and shown during the PowerPoint presentation at

1 the AAPS annual meeting in Marina Del Rey, to persons other
2 than the Stewart?

3 Yes.

4 No. 2: Did the people to whom the statements were made
5 reasonably understand that the statements were about Stewart?

6 Yes.

7 3. Did these people reasonably understand the statement
8 to mean that Stewart had committed the acts stated?

9 Yes.

10 Were the statements false?

11 Yes.

12 No. 5: Did Stewart prove by clear and convincing evidence
13 that AAPS knew the statements were false or had serious doubts
14 about the truth of the statement?

15 Yes.

16 ACTUAL DAMAGES:

17 No. 6: Was AAPS's conduct a substantial factor in causing
18 Stewart actual harm?

19 Yes.

20 No. 7: What are Stewart's actual damages for:

21 a. Harm to Stewart reputation: 2,000,000.

22 b. Shame, mortification, or hurt feelings: 1,000,000.

23 ASSUMED DAMAGES:

24 No. 8: What are the damages you award Stewart for the
25 assumed harm to her reputation and for shame, mortification, or

1 hurt feelings? You must award at least a nominal sum:

2 3,000,000.

3 Defamation Cerrato:

4 1. Did Cerrato make the statements set forth in the
5 March 28, 2012, e-mail to all members of AAPS and the
6 statements made and shown during the PowerPoint presentation at
7 the AAPS annual meeting in Marina Del Rey, California, to
8 persons other than Stewart?

9 Yes.

10 2. Did the people to whom the statements were made
11 reasonably understand that the statements were about Stewart?

12 Yes.

13 3. Did these people reasonably understand the statement
14 to mean that Stewart had committed the acts stated?

15 Yes.

16 4. Were the statements false?

17 Yes.

18 5. Did Stewart prove by clear and convincing evidence
19 that Cerrato knew the statements were false or had serious
20 doubts about the truth of the statement?

21 Yes.

22 ACTUAL DAMAGES:

23 6. Was Cerrato's conduct a substantial factor in causing
24 Stewart actual harm?

25 Yes.

1 7. What are Stewart's actual damages for:

2 a. Harm to Stewart's reputation? 3,000,000.

3 b. Shame, mortification, or hurt feelings? 1,000,000.

4 ASSUMED DAMAGES:

5 8. What are the damages you award Stewart for the assumed
6 harm to her reputation, and for shame, mortification, or hurt
7 feelings? You must award at least a nominal sum.

8 4,000,000.

9 Intentional Infliction of Emotional Distress - Cerrato:

10 1. Was Cerrato's conduct outrageous?

11 Yes.

12 2. Did Cerrato intend to cause Stewart emotional

13 distress? Or,

14 Did Cerrato act with reckless disregard of the probability
15 that Stewart would suffer emotional distress, knowing that
16 Stewart was present when the conduct occurred?

17 Yes.

18 3. Did Stewart suffer severe emotional distress?

19 Yes.

20 4. Was Cerrato's conduct a substantial factor in causing
21 Stewart severe emotional distress?

22 Yes.

23 5. What are Stewart's damages?

24 a. Past economic loss/lost earnings: 191,791.

25 Lost profits: None.

1 Medical expenses: None.

2 Other past economic loss: 890,136.

3 Total Past Economic Damages: 1,081,927.

4 Future economic loss, lost earnings: \$2,254,670.

5 Lost profits: None.

6 Excuse me.

7 Other future economic loss: 3,565,138.

8 Total Future Economic Damages: 5,819,808.

9 c. Past noneconomic loss, including physical pain/mental

10 suffering: 2,000,000.

11 d. Future noneconomic loss, including physical

12 pain/mental suffering: 1,600,000.

13 TOTAL: 10,501, 735.

14 Intentional Infliction of Emotional Distress - AAPS:

15 1. Was AAPS's conduct outrageous?

16 Yes.

17 2. Did AAPS intend to cause Stewart emotional distress?

18 Or,

19 Did AAPS act with reckless disregard of the probability

20 that Stewart would suffer emotional distress knowing that

21 Stewart was present when the conduct occurred?

22 Yes.

23 3. Did Stewart suffer severe emotional distress?

24 Yes.

25 4. Was AAPS's conduct a substantial factor in causing

1 Stewart's severe emotional distress?

2 Yes.

3 5. What are Stewart's damages?

4 a. Past economic loss/lost earnings: 191,791.

5 Lost profits: Zero.

6 Medical expenses: Zero.

7 Other past economic loss: 890,136.

8 Total Past Economic Damages: 1,081,927.

9 Future economic loss/lost earnings: 2,254,670.

10 Lost profits: Zero.

11 Other future economic loss: 3,565,138.

12 Total Future Economic Damages: 5,819,808.

13 c. Past economic loss, including physical pain/mental
14 suffering: 1,000,000.

15 d. Future noneconomic loss, including physical pain/
16 mental suffering: 1,500,000.

17 TOTAL: 9,401, 735.

18 Special Verdict - Common Law Right to Fair Procedure:

19 1. Did AAPS violate Stewart's Common Law Right to Fair
20 Procedure by means of the manner in which they terminated her
21 membership in AAPS?

22 Yes.

23 2. Was Stewart harmed by that failure?

24 Yes.

25 3. What are Stewart's damages?

1 a. Past economic loss: 1,081,927.

2 b. Future economic loss: 5,819,808.

3 TOTAL: \$6,901,735.

4 Punitive Damages:

5 No. 1: Did Cerrato engage in the conduct with malice,
6 oppression, or fraud?

7 Yes.

8 2. Did AAPS engage in the conduct with malice,
9 oppression, or fraud?

10 Yes."

11 Signed by the Presiding Juror, dated February 11, 2016.

12 THE COURT: Mr. Running, is that your verdict, sir?

13 THE JUROR NO. 2: I'm sorry?

14 THE COURT: Is that your verdict?

15 THE JUROR NO. 2: Yes.

16 THE COURT: Ms. Johns, is that your verdict, ma'am?

17 THE JUROR NO. 3: Yes.

18 THE COURT: Ms. Ramos, is that your verdict?

19 THE JUROR NO. 5: Yes.

20 THE COURT: Ms. Vargas, is that your verdict?

21 THE JUROR NO. 9: Yes.

22 THE COURT: Mr. Kotler, is that your verdict, sir?

23 THE JUROR NO. 12: Yes.

24 THE COURT: And Mr. Destefano, is that your verdict?

25 THE JUROR NO. 14: Yes.

1 THE COURT: All right. Because you have all
2 indicated that the plaintiff is entitled to punitive damages,
3 that then will necessitate a very brief presentation of
4 basically the financial worth of the defendants, the
5 Association, and Mr. Cerrato.

6 I have been informed by the attorneys that they can make
7 this presentation in about 15 minutes.

8 You all have been here since 8 this morning. I will leave
9 it up to you.

10 THE JURORS: We're in.

11 THE COURT: You're in. Okay. Let's get started.

12 MR. CONWELL: Your Honor, I don't have any
13 witnesses, just exhibits.

14 THE COURT: Understood.

15 MR. CONWELL: And I perhaps can do this by
16 stipulation now with defense counsel.

17 1767 was previously admitted with redactions of financial
18 information, and that's the 2013 tax return which is the most
19 recent return we have for AAPS. And so we would offer 2013
20 without the redactions.

21 (Exhibit 1767 previously marked for identification.)

22 THE COURT: Any objection?

23 MR. SCHNEIDER: Yes, we object. It's -- it is not
24 indicative of the defendant's financial condition what their
25 taxes were in 2013. It's irrelevant.

1 MR. CONWELL: And also, your Honor, there's already
2 been testimony from Mr. Carbone and from Bob Cerrato that it's
3 just gotten better since then; that the finances are even
4 better, the membership has grown. So it seems to me he's
5 objecting to his own harm. If necessary, we can subpoena the
6 current records.

7 THE COURT: No. The objection's overruled. The
8 point's well taken. He did indicate that the organization has
9 continued to grow and prosper; therefore, I would imagine the
10 returns for 2013 would probably understate their current net
11 worth, so I'll permit it.

12 MR. SCHNEIDER: Excuse me, your Honor. The returns
13 don't state the net worth at all. They're income tax returns.

14 MR. CONWELL: They actually do.

15 THE COURT: They'll be permitted.

16 (Exhibit 1767 received into evidence.)

17 MR. CONWELL: Thank you.

18 And the other evidence we have is already in evidence and
19 that's 1599. So I'm ready to go directly to closing.

20 THE COURT: Go.

21 MR. SCHNEIDER: We have no evidence to present.

22 THE COURT: Okay. And you have no burden there. I
23 understand.

24 MR. CONWELL: May I proceed, your Honor?

25 THE COURT: Yes, please.

1 MR. CONWELL: First, I want to say thank you for
2 your verdict.

3 So I told you those verdict forms are not easy to fill
4 out.

5 THE JURORS: Took us all day.

6 MR. CONWELL: Now you have a story to tell. They're
7 not easy to fill out. But you, obviously, gave it a lot of
8 thought. And so we -- I just want to say thank you on behalf
9 of Dr. Stewart.

10 So what you have done, what we've all tried to do, is to
11 make Dr. Stewart whole to the extent money can do that. But
12 her life is not going to be the same after what she's endured
13 for the last four years. There are injuries emotional and
14 otherwise that really probably can't be repaired with a
15 monetary award, and she'll just have to work that out during
16 the remainder of her life. I'm sure she will.

17 But she never should have been put into this place to
18 start with. This was something forced upon her by the men in
19 power over her at AAPS who decided her fate and never even gave
20 her a voice in the matter. What they did was wrong, and as
21 you've indicated, it's certainly worthy of punishment.

22 One of the factors for you to consider is the defendants'
23 reprehensible conduct. And expelling Dr. Stewart with
24 absolutely no evidence at all, to do so I think is cruel and
25 reprehensible. They knew that what they were doing was going

1 to ruin her career, and you really had to be heartless to do
2 that, and that is something that should be punished.

3 They could have come up with other forms of discipline.
4 In fact, in their history they've never come up with this
5 discipline. And instead, they decided to expel her. There's
6 no explanation for that other than malice, other than an intent
7 to hurt someone.

8 They brought a baseless lawsuit against her in March of
9 2012. As they have now admitted, they had absolutely no facts
10 to support that, and a lawsuit that made very, very serious
11 allegations against her.

12 And then after doing that, they sent an e-mail to the
13 entire membership on March 28th and said that this rogue
14 physician was sued and that we invite you, all 3,000-plus
15 members of the AAPS, to go to a public Web site and look at
16 what we have charged her with, you know, things that are
17 essentially crimes laid out there against her. I think that's
18 heartless and that's something that needs to be punished.

19 They then used that lawsuit and the disciplinary
20 proceedings in tandem to try to trap her. She had no -- she
21 had no contacts with Florida, and under the law they can't sue
22 you in a place where you have no contacts. That's
23 unconstitutional. And as you've heard, she asserted her
24 defense of lack of jurisdiction, but -- and they knew she was
25 right, I think.

1 But they tried to trap her into coming and made that
2 disciplinary hearing so that it could only be in person and
3 only in Florida with absolutely no reason to do so.

4 THE COURT: Permit me to interrupt you, but the
5 jury's been up an awfully long time. You're arguing for
6 punitive damages. They agree with you. They indicate that
7 punitive damages are warranted. They need some guidance on the
8 amount.

9 MR. CONWELL: Yes, your Honor.

10 Under the case law there are three factors: One is the
11 nature of the conduct; then one is the defendant's ability to
12 pay; and the third is the harm caused to the plaintiff.

13 So I can take a hint. I'm going to go on to the other
14 factors.

15 But in terms of what they've done to her, which is one of
16 the three factors that you would look at, I think, without
17 going through this evidence again, it's clearly just cruel and
18 reprehensible conduct. In terms of the harm this caused to
19 her, I think you've stated that by your verdict.

20 The other issue is it's called the defendant's ability to
21 pay. So now there's two documents in evidence and some
22 testimony in evidence that guide you in what is this
23 defendant's ability to pay. And one of them is the tax return
24 from 2013. And so we can look at that quickly because this is
25 part of the equation.

1 So what the tax return shows is a net assets -- or net
2 worth for nonprofit -- excuse me -- net assets for nonprofit on
3 line 22 of 2,682,000. Now that was back in 2013. The
4 testimony has been that they have only grown since then and
5 they've increased their membership.

6 So the other document I want to look at is 1599. And this
7 is the most important of the two because 1599 is the special
8 litigation assessment fee letter that was sent out in 2013.
9 And what they did was they sent this to all 3,000-plus members
10 at that time and they told them on page 2 of this that if you
11 don't pay the special litigation assessment fee of \$895, then
12 your board certification would be in jeopardy, that this was
13 part of the requirement of being a member and being board
14 certified was to support the AAPS when the AAPS needed that
15 support.

16 And so in less than a month, they were able to build
17 through that single letter a war chest of over \$2 million,
18 which they used to pay the New York attorneys for pursuing the
19 litigation against Dr. Stewart and the other doctors that you
20 heard about.

21 So that is the real source of their ability to pay. I
22 don't know how many doctors they have now. All I know is from
23 what they told us that there's a lot more than the 3,000 that
24 they had in 2012.

25 So when they want money to sue her, they go to those

1 doctors. Well, now when it comes time to pay a punitive damage
2 award, they can go to those doctors. And these doctors I don't
3 think are innocent in this matter. And the reason I say that
4 is because they're the ones who elected their leadership.
5 They're the ones who, when all this was happening, did not do
6 anything to step in for Dr. Stewart or anyone else. Their
7 income has been unaffected by all this. They're going on
8 making pretty nice incomes, I believe.

9 They're well able to pay money to the AAPS and it's about
10 time that they did something. It's about time they stepped up
11 to the plate instead of keeping just this matter of really
12 corruption in their leadership under the rug. They really have
13 got to come up now and come up with some money for this. And
14 it's, we've seen, very easy for them to send out a special
15 assessment to people who are members of this organization, and
16 they certainly will pay it because, as we've seen, if they
17 don't, then the AAPS will say that you're not meeting the
18 requirements of the bylaws by paying the money that's required
19 to support the organization. So they've got 3,000-plus members
20 now that they can go to with a special assessment. So they've
21 got the ability to pay a large -- a large amount of money.

22 What will it take to punish them? What will it take to
23 deter future conduct like this? And what will it take to make
24 a difference for the doctors out there who have just decided to
25 be quiet and in the background and not to get involved?

1 You know, this is another category that I can't give you a
2 number, really. I can only, you know, make some suggestions.
3 These -- these doctors could easily pay \$10,000 a doctor. When
4 they go to these conferences, when they go to these annual
5 meetings, I'm sure they're paying 2,000, maybe \$2500 for the
6 weekend. These meetings are at the Ritz Carltons, they're very
7 upscale events, so it's not a lot for them to pay money for
8 AAPS activities. In addition to that, they've got other fees
9 that they pay to the AAPS. \$10,000 is not a lot of money for
10 each of those doctors to pay.

11 That might be what it takes to make these members finally
12 do something and clean up their organization, 'cause this has
13 got to stop. It's got to stop. And there's really not another
14 way to do it. There's not another place to go to do something
15 about this. So long as the members tolerate it, it goes on.
16 Something's got to happen to make the members not tolerate it.

17 Punitive damages punish and they deter. Here's the way it
18 works. Imagine someone goes into another person's house and
19 they steal something very valuable from them. And later
20 they're caught and they have to return what they stole. But
21 they're not punished, there's no consequence to them; they just
22 give back what they took. They're no worse off than they were
23 before.

24 Then they go and they do it again -- somebody else's house
25 this time. They steal something very valuable and then they're

1 caught and they're not punished. This goes on.

2 Now, imagine that they -- this person goes into someone's
3 house, steals something very valuable, they're caught, they
4 return what they took, which is essentially what you've done so
5 far. Let's make them pay for the damage they caused, but
6 they're no worse off.

7 Now, that person is punished, faces trial, is found
8 guilty, goes to prison. The likelihood of that occurring again
9 is, I think, a lot less. That's how it deters. There's got to
10 be some punishment to deter. And so now that's where you step
11 in. What will it take to deter them? What will it take to get
12 the other -- I don't know how much -- 3,000-plus, maybe 4,000
13 doctors now to do something to clean up their organization?
14 They need someone to tell them that. And that someone is you.
15 'Cause what's happened here cannot be tolerated any longer.
16 Someone has got to put a stop to it.

17 And so that's what we're asking you to do is to punish
18 them and to do something to deter them.

19 If -- if you assume the number 3,000 doctors and they pay
20 10,000 a doctor, that would be \$30 million. That doesn't even
21 affect the \$2.6 million in net worth that they have. That's
22 just a special assessment.

23 I don't know if \$10,000 is the number. I mean, I think
24 some doctors won't even notice that. Some doctors will. Maybe
25 the amount is less than that. That's what you have to decide:

1 What will it take to deter and to punish them?

2 We've seen they can raise that kind of money literally
3 overnight. They can have it within the next 30 days.

4 So I hope that you speak on this and you express your
5 feelings about what's happened, and that you speak with a loud
6 voice, not a soft voice. And speak in a way that lets them
7 know that you're not going to tolerate this, that the community
8 is not going to tolerate this sort of conduct, and that when
9 someone is cruel like this to one of their own, they're going
10 to have to pay a penalty for that.

11 Let your voice be heard in the amount of your award. And
12 make the award substantial enough that it'll wake these people
13 up and motivate them to do the right thing. Thank you.

14 THE COURT: Okay. Thank you, Mr. Conwell.

15 All right. Mr. Schneider.

16 MR. SCHNEIDER: Good afternoon, ladies and
17 gentlemen. Notwithstanding the result of the initial phase of
18 this trial, we continue to thank you for your service. You,
19 obviously, spent a lot of time. You brought some questions to
20 make sure that you understood what it was that you were doing.
21 And you have spoken and we understand.

22 I told you yesterday that the AAPS leadership acted in a
23 wrong-headed way, although they were trying to achieve the
24 correct purpose. I've listened to what the verdict is to date,
25 and it would appear that you did not agree with me.

1 To some extent, AAPS has already recognized its errors in
2 conducting the meeting, whether it was valid or not. Part of
3 it, to be sure, was to protect itself. I'm not going to deny
4 that. Part of it was also to protect Dr. Stewart, to allow her
5 to return to business as usual and to get back the insurance
6 companies that she had. And to the extent that the resolution
7 that was reached on Sunday is not valid, they're going to do it
8 right. They do want to do the right thing for Dr. Stewart.
9 They do recognize the error.

10 But the error was not to hurt her. And I think the best
11 evidence of that is that they worked hard to make sure that she
12 would not lose her certification. And they believed -- you
13 heard evidence of it -- that the big ticket item is
14 certification. They really did not recognize the harm that
15 would befall Dr. Stewart merely from being ousted from the
16 organization. And I hope you keep that in mind.

17 Mr. Conwell accurately set forth the factors that you
18 should consider, the reprehensibleness, if that's a word. I
19 don't quite share his view that it was as reprehensible as he
20 makes it to be, but I am cognizant that you did find that my
21 client acted with fraud, malice, or oppression, and hence,
22 we're talking about punitive damages now.

23 Now, please bear in mind that the defendant that engaged
24 in this behavior was AAPS, and, yes, corporations are inanimate
25 objects. You can't even see them and they have to act through

1 people. But they didn't act through 3,000 doctors. They acted
2 through leadership. And it's AAPS that should be punished, not
3 the 10,000 -- or 3,000 members of it.

4 You've heard evidence that very few of them were active.
5 This is a volunteer organization, and most of the people are
6 there simply to preserve their certifications. And the fact
7 that doctors who are not defendants in this case should each
8 pony up \$10,000 simply does not make sense and it's not
9 necessary to punish them.

10 And when we look at the electorate, the electorate
11 actually included Dr. Stewart. She was part of the group of
12 people who was voting for leaders. She voted for
13 representatives of her Dermatological Academy just like the
14 other doctors did, and it simply doesn't make sense to be
15 leaning on the doctors simply because they -- the AAPS can do
16 that, that AAPS has a hold over them by virtue of the
17 certification. That's -- that's not the way to punish people
18 by getting innocent people to have to contribute.

19 Certainly your verdict to date has sent a message that's
20 been received. I do agree with Mr. Conwell that punishment is
21 in order -- well, for one thing, I have to. You've already
22 decided that. But, you know, when someone steals something,
23 merely asking him to give it back is really not punishment. I
24 do understand that, and I'm not going to tell you otherwise.

25 But the idea of \$30 million? And you know, this money is

1 exclusively to punish and deter. You've already issued an
2 award that's designed to make Dr. Stewart whole. And she may
3 not be whole emotionally, but we have a system where the only
4 thing that you can provide is dollars. And I'm not going to
5 pretend that dollars necessarily represent a cure to whatever
6 distress Dr. Stewart has suffered, but with that verdict, she
7 has been made whole. So that's not what we're talking about
8 here.

9 What we're talking about here is what is necessary to
10 deter. And I really, you know, talked yesterday about reserve
11 second basemen making \$3 million. You all know what you make.
12 I know what I make. And we're not -- well, I can't speak for
13 all of you -- I assume you're not making the \$3 million the
14 second basemen are. But let's keep track of what real dollars
15 are, and \$1 million is certainly enough to send a message and a
16 deterrent.

17 Now, you also rendered a punitive damages decision as to
18 Dr. Cerrato. And there's no evidence whatsoever of
19 Dr. Cerrato's net worth. There's no evidence of his income.
20 And you're not permitted to simply assume that he must be
21 making money because he's a doctor. So you cannot award
22 punitive damages against Dr. Cerrato.

23 Again, I ask you to use your best judgment, and again I
24 thank you for your attentiveness.

25 THE COURT: All right. Thank you, counsel.

1 One short instruction, ladies and gentlemen.

2 If you find that punitive damages are appropriate, you
3 must use reason in setting the amount. Punitive damages, if
4 any, should be in an amount sufficient to fulfill their
5 purposes, but should not reflect bias, prejudice, or sympathy
6 toward any party.

7 In considering the amount of any punitive damages,
8 consider the degree of reprehensibility of the defendants'
9 conduct, including whether the conduct that harmed the
10 plaintiff was particularly reprehensible because it also caused
11 actual harm.

12 In addition, you may consider the relationship of any
13 award of punitive damages to any actual harm inflicted on the
14 plaintiff.

15 All right. Ladies and gentlemen, once again, a special
16 verdict form has been provided to you. In this particular
17 case, there will be two distinct forms because you have
18 indicated by your initial verdict in phase one of the trial
19 that punitive or exemplary damages are warranted against both
20 the organization and Dr. Cerrato. Therefore, there are two
21 forms, one for each of those defendants.

22 All right. You may now retire and deliberate on the issue
23 of punitive damages alone. Thank you.

24 THE COURTROOM DEPUTY: All rise.

25 (Jury retires to commence deliberations.)

1 (Open court out of the presence of the jury.)

2 MR. CONWELL: Your Honor, I had a question. I
3 thought that on the verdict form at the very bottom there was a
4 place for a total number where they were supposed to compute
5 and I didn't hear that.

6 THE COURT: It's there. It's on there. It's a huge
7 number. It's \$10 million or something.

8 THE COURTROOM DEPUTY: On which part?

9 MR. CONWELL: On the last page there should be a
10 place for a total.

11 THE COURTROOM DEPUTY: Yeah. I read it on each
12 page.

13 THE COURT: No. The very -- sugar, look at the very
14 last page, 10 million something.

15 THE COURTROOM DEPUTY: I'm at the last page.

16 THE COURT: No, no, no, not that one. That's for
17 the punitives.

18 THE COURTROOM DEPUTY: Which one you talking about?
19 I read the 10,000,000. Yeah, 10.5.

20 (Discussion off the record.)

21 THE COURT: I'm going to make -- well, I shouldn't
22 assume. Back on the record.

23 Earlier before the jury returned its verdict, we had
24 placed on the record the fact that there had been a settlement
25 reached. And Mr. Schneider had indicated that he had

1 signatures on behalf of the other defendants approving the term
2 of the settlement. But we have not heard from the plaintiff.

3 Now, you were here when the settlement was read into the
4 record, correct?

5 MS. STEWART: Yes, sir.

6 THE COURT: \$5 million settlement? Do you approve
7 of the settlement?

8 MS. STEWART: 5.5.

9 THE COURT: \$5.5 million. Do you approve of the
10 terms of the settlement as recited by Mr. Schneider?

11 MS. STEWART: Yes, sir.

12 THE COURT: Okay. Excellent. Anything else in
13 terms of --

14 MR. SCHNEIDER: Your Honor, I don't think the jury
15 is permitted to award punitive damages against Dr. Cerrato with
16 no evidence of his net worth or his income.

17 THE COURT: They can award a dollar.

18 MR. SCHNEIDER: Not under California law.

19 THE COURT: All right. You can appeal it, if it's
20 worth it.

21 MR. SCHNEIDER: Okay.

22 (Discussion off the record and brief pause.)

23 (Open court in the presence of the jury.)

24 THE COURT: All right. Mr. Kotler, I understand
25 you've finally reached a verdict --

1 THE FOREPERSON: Yes, we have.

2 THE COURT: -- on the punitive damages of the case?

3 THE FOREPERSON: Yes, we have, sir.

4 THE COURT: I'm sure you did hear the test will be
5 going on for half an hour?

6 THE FOREPERSON: We didn't hear that.

7 THE COURT: You didn't hear that?

8 THE FOREPERSON: We saw the blinking light.

9 THE COURT: Okay. All right. I'm glad you didn't
10 leave.

11 If you'll hand the verdict to Ms. English, please.

12 Would you please publish the verdict, please.

13 THE COURTROOM DEPUTY: (Reading:)

14 "Punitive Damages:

15 1. Did AAPS engage in the conduct with malice,
16 oppression, or fraud?

17 Yes.

18 2. What amount of punitive damages, if any, do you award
19 Stewart?

20 14,000,000."

21 Signed by the Presiding Juror Foreperson, dated
22 February 11, 2016.

23 "Punitive Damages:

24 1. Did Cerrato engage in conduct with malice, oppression,
25 or fraud?

1 Yes.

2 2. What amount of punitive damages, if any, do you award
3 Stewart?

4 6 million."

5 Signed by the Jury Foreperson, dated February 11, 2016.

6 THE COURT: All right. Is this your verdict,
7 Ms. Vargas?

8 THE JUROR NO. 9: Yes.

9 THE COURT: Mr. Kotler?

10 THE JUROR NO. 12: Yes, sir.

11 THE COURT: Mr. Destefano?

12 THE JUROR NO. 14: Yes.

13 THE COURT: Ms. Ramos?

14 THE JUROR NO. 5: Yes.

15 THE COURT: Ms. Johns?

16 THE JUROR NO. 3: Yes.

17 THE COURT: Ms. Johns, yes?

18 THE JUROR NO. 3: Yes.

19 THE COURT: All right. And Mr. Running?

20 THE JUROR NO. 2: Yes, sir.

21 THE COURT: All right. Ladies and gentlemen, thank
22 you so much. You guys have been above and beyond and more than
23 we ever could have hoped for. But I have a small favor to ask
24 of you: 30 seconds. I want to speak to you. So if you'll go
25 back into the jury deliberation room, I've got precisely

1 one-half of one thing I need to deal with the lawyers on and
2 then I want to come talk to you. Would you do that?

3 All right. Thank you.

4 THE COURTROOM DEPUTY: All rise.

5 (Open court out of the presence of the jury.)

6 THE COURT: All right. Earlier, Mr. Schneider
7 raised an issue with respect to any award of punitive damages
8 against Cerrato. I did a little brief research and your point
9 is well taken. Any award of punitive damages in the absence of
10 any evidence whatsoever of that gentleman's worth is based upon
11 pure speculation.

12 If you make a motion to strike that award -- well, do you?

13 MR. SCHNEIDER: I move to strike that award.

14 THE COURT: It's stricken.

15 I'm going to -- is there anything else that we need to
16 take care of on the record?

17 MR. CONWELL: Just one thing. Just one thing, your
18 Honor. What we'd said before on the total amount of the --

19 THE COURT: Good-bye.

20 MR. CONWELL: -- compensatory award?

21 THE COURT: Okay.

22 (Proceedings concluded at 7:03 p.m.)
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

I, DEBRA READ, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE, THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 11TH DAY OF FEBRUARY, 2016.

/S/ DEBRA READ

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